

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 40128 of 2003(B)

PETITIONER:

MRS.MARY STELLA CYRIL,
MARY LAND, KADAPPAKKADA, KOLLAM.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF PUBLIC ADMINISTRATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

GOVERNMENT PLEADER SRI. SHYSON P. MANGUZHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 TRUE PHOTOCOPY OF THE LEGAL HEIRSHIP CERTIFICATE
ISSUED BY THE TAHSILDAR KOLLAM VIDE NO.
C/2/12857/2001/K.DIS. DATED 18.10.2001.
- EXT.P2 TRUE COPY OF THE PETITION DATED 22.12.2001 SUBMITTED
BY THE PETITIONER BEFORE THE RESPONDENT.
- EXT.P3 TRUE COPY OF THE INTIMATION NO.
55008/ACCOUNTS/G.1/02/G.A.D. DATED 5.5.2003.
- EXT.P4
- EXT.R1 LETTER NO. PF9/CLO.170/02-03/1364, DATED 29.1.2003.
- EXT.R2 PF9/RB151/03-04/761 DATED 19.12.2003.
- EXT.R3 ENQUIRY REPORT OF UNDER SECRETARY TO GOVERNMENT
REGARDING SURVIVING MEMBERS.
- EXT.R4 AICAT GL'S LETTER NO. P.09/PEN.A/929/TT-01-02/1923/DT.
20.3.2002.
- EXT.R5 G.O.(RT) NO. 8681/2003/GAD DATED 8.12.2003.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

W.P.© 40128/2003

DATED THIS, THE 22ND DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner is a widow aged 78 years. Her son, Joseph Cyril, died on 27.7.2001 while he was working as a Senior Grade Assistant in the Revenue Department, Secretariat, Thiruvananthapuram. The retrial benefits due and payable to the deceased was apportioned between his legal heirs including the petitioner and an amount of Rs. 15,000/- was paid to her. Petitioner contends that so far the balance amount is not disbursed to her. As per the legal heir certificate Ext.P1 produced in the case, apart from the petitioner- the mother and unmarried sister Thelma Cyril, the wife of the deceased Smt. Sheela Joseph is also shown as a legal heir. After the death of the employee, petitioner approached the authorities to disburse the shares of herself and her unmarried daughter, as per Ext.P2. It was pursuant to that, an amount of Rs. 15,000/- was paid. But the grievance of the petitioner is that no details regarding the benefits due to her son was furnished and she believes that they are entitled for more amounts what has been paid. The prayer in the writ petition is for a direction to disburse the

balance amount due to the petitioner and her unmarried daughter as the legal representatives of late Sri. Joseph Cyril.

2. The respondent State has filed a counter affidavit through the Under Secretary to Government, General Administration (Accounts) Department. The averments made in the writ petition are denied and it is averred that the Government have already released the amount due to the petitioner and her unmarried daughter in time and accordingly, an amount of Rs. 15,262/- was handed over to the petitioner. The details of disbursement of the service benefits of late Sri. Joseph Cyril to his legal heirs namely, his wife Sheela Joseph, mother the petitioner herein and the unmarried daughter are also detailed in the table shown in para 4 of the counter affidavit. It is stated that the service benefits like terminal surrender, promotion arrears, D.A. arrears and last pay have given to the petitioner, her unmarried daughter and to Sheela Joseph in equal shares. In the case of G.P.F., since there was a valid nomination by the deceased, the amount in the said account namely Rs. 70,126/- was paid to the wife of the deceased as authorized by the Office of the Accountant General. Exts. R1 and R2 are produced to that effect. As regards the family pension, the wife of the deceased Smt. Sheela Joseph applied for family pension benefits in pension book on 29.10.2004 along with all necessary enclosures; but it was

found that no valid nomination was made therein. Hence a departmental enquiry as contemplated under the Kerala Service Rules was conducted to ascertain the surviving family members of the deceased. Ext.R3 produced is the formal enquiry report in the matter. It is further averred that on representation made by Smt. Mary Stella Cyril the mother of the deceased, who is the petitioner herein, to release the eligible monetary benefits and based on the enquiry report, the amounts were disbursed in equal shares to all the three heirs. It is also seen from Ext.R4 dated 20.3.2002 that the Accountant General, has remarked that the share in the DCRG due to the mother and sister are with-held as they are not eligible to get the same and request was made to forward the claim of the wife of the deceased along with the death certificate for necessary action. As per Ext.P5 Government Order dated 8.12.2003, Ext.P5 the Accountant General has also issued orders sanctioning the DCRG amount of Rs. 1,04,940/- to Smt. Sheela Joseph, the wife of the deceased, in full.

3. As per Rule 90(6) of Part III KSR and as per G.O.(P) No. 1011/2001/Fin.. dated 29.8.2001 wife, in the case of male employee, is the first eligible legal heir in the seniority list to receive the pensionary benefits. Further, on departmental enquiry it was noticed that the petitioner is already receiving one family pension of her late husband and as such her annual

income is above Rs. 4,800/-. Since the person receiving one family pension is not eligible to receive any other family pension as per the rules, she is not entitled to such benefits. The unmarried elder sister of Joseph Cyril can however apply for family pension of her father after the death of the mother.

The facts being thus stated, there cannot be any subsisting grievance to be redressed in this writ petition and I do not find any merit in the writ petition.

The writ petition fails. It is accordingly, dismissed.

P.R. RAMAN,
(JUDGE)

knc/-